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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

10  
11 UNITED STATES OF AMERICA, )  
12 )  
13 Plaintiff, ) No. 8354-WMB  
14 )  
15 vs. )  
16 DANIEL ELLSBERG, )  
17 Defendant. )  
18 STATE OF MASSACHUSETTS )  
19 COUNTY OF MIDDLESEX ) SS  
20 Abram Chayes, being first duly sworn, deposes and says:  
21 1. My name is Abraham Chayes. I live at 3 Hubbard Park,  
22 Cambridge, Massachusetts 02138. I am presently employed as  
23 Professor of Law at Harvard Law School, teaching courses in  
24 Civil Procedure and International Law.  
25 2. My professional experience includes: 1949-50, legal  
26 adviser to Governor Chester Bowles of Connecticut; 1951-52, law  
27 clerk to Justice Felix Frankfurter, United States Supreme Court;  
28 1952-55, associate, Covington & Burling, Washington, D.C.;  
29 1955-60, Associate Professor and then Professor of Law, Harvard  
30 Law School; 1964-65, of counsel, Ginsburg & Feldman, Washington, D.C.  
31 3. From January 1961 to June 1964 I held the office of  
32 Legal Adviser to the United States Department of State.

AFFIDAVIT OF ABRAM CHAYES

1                   4. The Legal Adviser is appointed by the President  
2 with the advice and consent of the Senate and has the statutory  
3 rank of Assistant Secretary of State. He has general  
4 responsibility for the legal work of the Department in the  
5 fields of both international and domestic law. He supervises  
6 an office of some 60 lawyers. His responsibilities are  
7 comparable to those of the General Counsel of other Cabinet  
8 departments.

9                   5. On a number of occasions during my tenure, I was  
10 officially consulted about the scope of Title 18 U.S.C. Sec.793,  
11 in connection with incidents of unauthorized disclosure to  
12 newspapers of information classified under Executive Order 10501.  
13 In each case, I responded to the effect that criminal liability  
14 under that section could not be established without a showing  
15 of specific intent to injure the United States or to aid a foreign  
16 power; that the circumstances of publication in the particular  
17 case made such proof unlikely; and that absent such intent, the  
18 only recourse was to administrative penalties within the  
19 Department. To the best of my recollection, one or more of  
20 these opinions was delivered in writing.

21                   6. On one occasion I was consulted with respect to the  
22 enforcement of the undertaking in the Security Termination  
23 Statement signed by officers or employees upon leaving the  
24 government service to the effect that the employee had surrendered  
25 all classified information in his custody and would not knowingly  
26 or willfully communicate, deliver or transmit classified  
27 information to an unauthorized person or agency. The question  
28 was whether this undertaking could be enforced by criminal  
29 penalties. I advised that absent conduct accompanied by the  
30 specific intent required for conviction under §793 or amounting  
31 independently to a violation of some other provision of the  
32 Criminal Code, criminal enforcement of this undertaking was

1 not available. To the best of my knowledge, this opinion  
2 was delivered in writing.

3 7. Although these opinions represented my independent  
4 legal judgment, they were prepared in consultation with  
5 responsible attorneys in the Office of the Legal Adviser  
6 and, in some cases, after consultation with the Department  
7 of Justice. It was my understanding that this interpretation  
8 represented the consistent and unbroken view of both Depart-  
9 ments as to the scope of the statute involved.

10 8. Written opinions of the kind mentioned herein would  
11 not ordinarily be classified in the Department of State and  
12 would as a usual practice be preserved among the permanent  
13 records of the Department.

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— Abram Chayes —

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Subscribed and sworn to me this      day of October, 1971.

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— NOTARY PUBLIC —

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